Supreme Court, U. S.
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In the
Supreme Court of the United States.

OCTOBER TERM, 1976.

No. 76-630.

NORTEK, INC.,
PETITIONER,

v.

ALEXANDER GRANT & COMPANY, ET AL.,
RESPONDENT,

v.

SANI DISTRIBUTORS, INC., ET AL.,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Reply of Petitioner to Brief in Opposition to Petition for a Writ of Certiorari.

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BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS.

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At page 2 of the brief for defendants-appellees, there appear certain incorrect factual representations:

In the text it is stated that Nortek was "bound to consummate the purchase if the unaudited figures were, in fact, confirmed."

On the contrary, the purchase agreement does not so provide. Further, Attorney Dressler, who represented Nortek in respect of the acquisition, was questioned as to the purpose for the furnishing of the financial statements and testified as follows:

> "No, to put it another way, I think, to look at it from a lawyer's point of view, Nortek had the right to accept or reject the acquisition if it did not find financials referred to in that letter acceptable, irrespective of whether they were consistent or inconsistent with the prior financials." (*Dressler Deposition*, p. 15.)

In the footnote at page 2 it is said that Grant was retained in Florida, performed its audit work in Florida, and delivered its certificate in Florida.

In fact, Grant does not appear to have been licensed to practice in Florida and its engagement letter issued out of New York though signed by Webb in Florida. Further, while Grant utilized both its personnel and those of a prospective Florida merger partner, to perform audit work in Florida, it controlled the job out of New York. *Maurer Deposition*, p. 142. Finally, there is no evidence that Grant's certification was delivered in Florida. That issue remained open at the time the District Court entered its order on summary judgment. What does appear is that the audit opinion sued upon was sent to Nortek in Rhode Island on Grant's New York letterhead.

For reasons stated in petitioner's original brief, the action is one which warrants review by this Court and it is respectfully requested that the petition be granted.

Respectfully submitted,

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